

112TH CONGRESS  
2D SESSION

# S. 2167

To increase the employment of Americans by requiring State workforce agencies to certify that employers are actively recruiting Americans and that Americans are not qualified or available to fill the positions that the employer wants to fill with H-2B nonimmigrants.

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## IN THE SENATE OF THE UNITED STATES

MARCH 7, 2012

Mr. MERKLEY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To increase the employment of Americans by requiring State workforce agencies to certify that employers are actively recruiting Americans and that Americans are not qualified or available to fill the positions that the employer wants to fill with H-2B nonimmigrants.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “American Jobs in  
5       American Forests Act of 2012”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act:

1       (a) PROSPECTIVE H-2B EMPLOYER.—The term  
2 “prospective H-2B employer” means a United States  
3 business that is considering employing 1 or more non-  
4 immigrants described in section 101(a)(15)(H)(ii)(b) of  
5 the Immigration and Nationality Act (8 U.S.C.  
6 1101(a)(15)(H)(ii)(b)).

7       (b) STATE WORKFORCE AGENCY.—Except as used in  
8 section 3, the term “State workforce agency” means the  
9 workforce agency of the State in which the prospective H-  
10 2B employer intends to employ H-2B nonimmigrants.

11 **SEC. 3. DEPARTMENT OF LABOR.**

12       (a) RECRUITMENT.—As a component of the labor  
13 certification process required before H-2B nonimmigrants  
14 are offered employment in the United States, the Sec-  
15 retary of Labor shall require all prospective H-2B employ-  
16 ers, before they submit a petition to hire H-2B non-  
17 immigrant workers, to conduct a robust effort to recruit  
18 United States workers, including—

19           (1) advertising at employment or job-placement  
20 events, such as job fairs;

21           (2) advertising with State or local workforce  
22 agencies, nonprofit organizations, or other appro-  
23 priate entities, and working with such entities to  
24 identify potential employees;

1           (3) advertising in appropriate media, including  
2           local radio stations and commonly used, reputable  
3           Internet job-search sites; and

4           (4) such other recruitment strategies as the  
5           State workforce agency considers appropriate for the  
6           sector or positions for which H-2B nonimmigrants  
7           would be considered.

8           (b) SEPARATE PETITIONS.—A prospective H-2B em-  
9           ployer shall submit a separate petition for each State in  
10          which the employer plans to employ H-2B nonimmigrants  
11          for a period of 7 days or longer.

12       **SEC. 4. STATE WORKFORCE AGENCIES.**

13          The Secretary of Labor may not grant a temporary  
14          labor certification to a prospective H-2B employer until  
15          after the Director of the State workforce agency—

16               (1) has formally consulted with the workforce  
17               agency director of each contiguous State listed on  
18               the prospective H-2B employer's application and de-  
19               termined that—

20                       (A) the employer has complied with all re-  
21                       cruitment requirements set forth in section 3  
22                       and there is a legitimate demand for the em-  
23                       ployment of H-2B nonimmigrants in each of  
24                       those States; or

1           (B) the employer has amended the applica-  
2           tion by removing or making appropriate modi-  
3           fications with respect to the States in which the  
4           criteria set forth in subparagraph (A) have not  
5           been met;

6           (2) certifies that the prospective H-2B em-  
7           ployer has complied with all recruitment require-  
8           ments set forth in section 3 or any other applicable  
9           provision of law; and

10          (3) makes a formal determination that nation-  
11          als of the United States are not qualified or avail-  
12          able to fill the employment opportunities offered by  
13          the prospective H-2B employer.

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